



DEPARTMENT OF COMMERCE

**National Oceanic and Atmospheric Administration**

**[RTID 0648-XC059]**

**Atlantic Coastal Fisheries Cooperative Management Act Provisions; General Provisions for Domestic Fisheries; Application for Exempted Fishing Permits**

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice; request for comments.

**SUMMARY:** The Assistant Regional Administrator for Sustainable Fisheries, Greater Atlantic Region, NMFS, has made a preliminary determination that an Exempted Fishing Permit application contains all of the required information and warrants further consideration. The Exempted Fishing Permit would allow commercial fishing vessels to fish outside fishery regulations in support of research conducted by the applicant. Regulations under the Magnuson-Stevens Fishery Conservation and Management Act and the Atlantic Coastal Fisheries Cooperative Management Act require publication of this notification to provide interested parties the opportunity to comment on applications for proposed Exempted Fishing Permits.

**DATES:** Comments must be received on or before *[insert date 15 days after date of publication in the FEDERAL REGISTER]*.

**ADDRESSES:** You may submit written comments by the following method:

- Email: [nmfs.gar.efp@noaa.gov](mailto:nmfs.gar.efp@noaa.gov). Include in the subject line "NEFSC On-Demand Gear EFP."

**FOR FURTHER INFORMATION CONTACT:** Laura Deighan, Fishery Management Specialist, [Laura.Deighan@noaa.gov](mailto:Laura.Deighan@noaa.gov), (978) 281-9184.

**SUPPLEMENTARY INFORMATION:** The NOAA Northeast Fisheries Science Center submitted a complete application for an Exempted Fishing Permit (EFP) to

conduct commercial fishing activities that the regulations would otherwise restrict to expand trials of on-demand fishing gear that uses one or no surface buoys and to test the ability of gear marking systems to consistently locate gear. This EFP would exempt the participating vessels from the gear marking requirements at 50 CFR 697.21(b)(2) to allow the use of trawls of more than three traps that have one or no surface markers.

This project would be a continuation and expansion of the Center's trials of on-demand fishing systems aimed at reducing the entanglement risk to protected species, mainly the North Atlantic right whale, in the American lobster and Jonah crab fisheries. If granted, this permit would allow up to 100 vessels to replace up to 10 of their existing trawls with modified trawls that replace one or both vertical lines with acoustic on-demand systems or other alternatives to static buoy lines (including, but not limited to, spooled systems, buoy and stowed rope systems, lift bag systems, and grappling). The previous permit authorized gear trials on 5 vessels, and this project would expand the trial to up to 100 participating vessels at a time, for a total of up to 1,000 modified trawls, between the issue date and May 1, 2023.

This project would include the opportunity for up to 30 of the participating vessels at a time to trial gear (up to 300 trawls) without static vertical lines in Atlantic Large Whale Take Reduction Plan (ALWTRP) Restricted Areas. In recognition of industry's interest in grappling as a low-cost alternative to acoustic on-demand systems, this project would also allow up to 25 vessels to retrieve buoyless gear via grappling to enable the Center to collect data on the viability of grappling at a commercial scale.

One of the goals of this project is to test the efficacy of on-demand fishing gear and other alternatives to static buoy lines under a variety of oceanographic conditions. To achieve this goal, participation would not be limited to tightly prescribed and predetermined areas, but would occur in areas where fishermen are willing to participate and data collection will be useful. Priority would be given to participants who are

seasonally excluded from fishing in certain areas and/or participants in offshore fisheries that have limited entanglement mitigation options available. This project would prioritize the following times and areas of interest (though many participants would likely use experimental gear in the months outside of a closure to gain familiarity with the systems):

- Lobster Management Area (LMA) 1, Restricted Area in the Gulf of Maine between October 1 and January 31;
- LMA 1, Massachusetts Bay Restricted Area or Massachusetts state waters, between February 1 and May 15 (with the exception of the area defined under 322 MA Regulation 12.05);
- LMA 1, areas in Downeast Maine where participants may trial gear as part of a Gear Innovation Plan that gains access to markets lost by the Monterey Bay Red-Listing;
- LMA 2, LMA 2/3 overlap, and LMA 3, Large South Island Closure between February 1 and April 30; and
- LMA 3, offshore areas, including in Groundfish Closed Area 2, between May 1 and December 31.

Note that this permit would exempt participating vessels from the specified Federal regulations in Federal waters only. The Center is responsible for obtaining all required state authorizations for any activities in state waters.

The second goal of this project is to trial gear marking systems (using GPS points or alternatively subsurface markings) to determine the ability to consistently relocate fishing gear and improve the ability to notify other fishermen, including those in the fixed and mobile fleet, that the gear is present. These systems are intended to prevent increases in gear conflicts despite the absence of surface markings.

This EFP does not exempt the vessels from any requirements imposed by any state, the Endangered Species Act, the Marine Mammal Protection Act, or any other

applicable laws. Other than gear markings, the trawls would be consistent with the regulations of the management area where the vessel is fishing and would include no more than 50 traps per trawl. The trawls would be fished in accordance with the participating vessels' standard operations and all applicable regulations in terms of the number and length of trips, soak times, trap limits, etc. The Center would implement additional protocols to mitigate risks of impacts to whales or of gear conflicts:

- For all participants, fishing within and outside of the Restricted Areas, at all times:
  - The Center would provide information on species identification and protocols to report live, dead, or entangled sightings of North Atlantic right whales;
  - All vessels would provide mandatory, weekly gear loss reports;
  - All vessels would retrieve on-demand vertical lines as quickly as possible to minimize time in the water column;
  - Typical soak times would be no longer than 30 days, but are anticipated to be less than 14 days (weather permitting and without unforeseen circumstances);
  - All vessels would adhere to current approach regulations—a 500-yard (457.2-m) buffer zone created by a surfacing right whale—and must depart immediately at a safe and slow speed, in accordance with current regulations. Hauling any lobster gear would immediately cease, by either removal or resetting, to accommodate the regulation and be reinitiated only after it is reasonable to assume the whale has left the area;
  - Vessels would operate within a 10-knot speed limit when transiting Restricted Areas or when whales are observed;

- For all participants fishing in the Restricted Areas, and for participants fishing outside the Restricted Areas, opportunistically:
  - Smart buoy technology would be used to provide alerts to the fishermen and the Center within two hours of an unplanned release of a stowed line;
  - Participants would record visual right whale sightings on data sheets when in the fishing area;
  - Participants would use Trap Tracker or an equivalent application for retrieval and set positioning details, which would be available to Federal, State and corresponding enforcement personnel, as well as other fishermen. The Edge Tech Trap Tracker App uploads the location of subsurface gear to the cloud, which allows other users to see the location, similar to the way a surface buoy would, to reduce gear conflicts.
- For all participants in the Restricted Areas:
  - On demand vertical lines will be marked with unique markings in addition to Atlantic Large Whale Take Reduction Plan regulations. Specifically, the Center worked with NMFS Atlantic Large Whale Take Reduction Team Coordinator for specific markings/color combinations unique to the proposed project, which will be provided to the Office of Law Enforcement; and
  - All vessels would fly a unique flag for enforcement recognition.

In addition, the following measures would be implemented to reduce potential gear conflicts:

- The Center will regularly provide the approximate location and intensity of fishing in restricted areas where trawls will not have any surface markers;

- Industry members that are fishing in areas identified as having trap gear without surface markings are encouraged to contact the Center for additional information on gear location; and
- Project participants and Center personnel will proactively communicate within local ports with mobile and fixed gear fleets on fishing effort and location under the EFP, with particular focus on restricted areas.

The Center would provide training to ensure all participants achieve a sufficient level of experience with the gear prior to borrowing from their gear cache library. Center staff and engineering teams would oversee deployments. In some cases, a scientific observer may be on board, but they would not be required due to space and COVID considerations. Participants may use GoPro Systems (or equivalent or better) to record some or all of the gear retrievals for later review.

The Center would provide standardized data collection sheets to all participants. These data may be included in analyses for a final report to determine the efficacy of the experiment, but individually-identifiable data will only be made available with the express permission of the vessel owner. The results of this project would be used to inform future regulatory and National Environmental Policy Act (NEPA) analysis and to provide feedback to manufacturers of on-demand gear on improvements that would increase performance of on-demand systems under commercial fishery conditions. The ultimate goal of this project is to enable the continuation of one of the region's most valuable fisheries, while also meeting the requirements set forth by the ALWTRP and section 118(f) of the MMPA, specifically reducing the level of serious injury and mortality of North Atlantic right, humpback, and fin whales in commercial trap/pot fisheries.

If approved, the applicant may request minor modifications and extensions to the EFP throughout the year. EFP modifications and extensions may be granted without further notice if they are deemed essential to facilitate completion of the proposed research and have minimal impacts that do not change the scope or impact of the initially approved EFP request. Any fishing activity conducted outside the scope of the exempted fishing activity would be prohibited.

**Authority:** 16 U.S.C. 1801 *et seq.*

Dated: May 25, 2022.

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Jennifer M. Wallace,

Acting Director, Office of Sustainable Fisheries,

National Marine Fisheries Service.

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